



NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

ETHEL B. BRANCH
ATTORNEY GENERAL

CHERIE ESPINOSA
ACTING DEPUTY ATTORNEY GENERAL

October 23, 2018

Mr. John Barg
Barg Coffin Lewis & Trapp, LLP
350 California St., 22nd Floor
San Francisco, CA 94104-1435

Mr. Maher M. Zein
Arcadis U.S., Inc.
320 Commerce Suite 200 Irvine CA | 92602 | USA
T. +1 714 508 2667 | M. +1 949 310 9294
BNSF Railway Company, Inc.

RE: Access for BNSF to Haystack Mines Site

Dear Mr. Barg and Mr. Zein:

This letter is in response to a request for access to portions of the Haystack Mines Site, located in the Baca/Prewitt Chapter of the Navajo Nation, McKinley County, New Mexico, for the purposes of CERCLA removal activities under an Administrative Order on Consent between your client, BNSF Railway Company, Inc. (BNSF), and the United States Environmental Protection Agency (USEPA).

This letter designates BNSF as a representative of the Navajo Nation Environmental Protection Agency (NNEPA) in accordance with the Navajo Nation Comprehensive Environmental Response, Compensation and Liability Act of 2008 (NNCERCLA), 4 Navajo Nation Code (N.N.C.) §2101 et seq., for purposes of conducting interim removal actions at the Haystack Mines Site, as described more fully below.

BNSF or its predecessors-in-interest previously operated certain uranium mines in McKinley County, New Mexico, and the Baca/Prewitt Chapter of the Navajo Nation. In 2017, BNSF entered into an Administrative Settlement Agreement And Order On Consent For Removal Action (AOC) with USEPA for purposes of performing time critical removal actions at the specified sites. The AOC and its attachments, which are incorporated in this letter by this reference, specify the obligations of BNSF to carry out the interim actions involved in this designation.

The anticipated activities will require entry on the Sites and nearby lands for the purposes of surveys, sampling, studies, and interim actions. Some of the anticipated work will be performed on lands within the jurisdiction of the Navajo Nation as defined in 4 N.N.C. §2104.

The NNEPA has the authority to designate a "representative" for purposes of assisting it to carry out the purposes of the NNCERCLA in accordance with 4 N.N.C. §2103(G) and 4 N.N.C. §2301. Therefore, the NNEPA, with the concurrence of the Navajo Nation Department of Justice (NNDJ), hereby designates BNSF, including its agents, contractors or assignees, as its representative for purposes of carrying out the above-described environmental activities.

This designation shall automatically terminate upon completion of field work under the AOC or upon 24 hours written notice of termination by the Navajo Nation Department of Justice provided to BNSF, whichever comes first. The notice of termination may be provided to BNSF by electronic mail to the addressees of this letter or to any other appropriate BNSF official with knowledge of this matter.

As you know, it is important for BNSF to also seek to obtain consent to access from individuals impacted by the site work. With the assistance of NNEPA and/or USEPA, BNSF shall make good faith efforts to obtain individual access consent forms from persons who will be directly impacted by the activities to be performed under the AOC. Those impacted may include persons who will be disrupted by vehicle traffic, noise, or dust, and any resident who is actively utilizing the site (farming, grazing, residing).

If entry on fee lands is needed, BNSF should also seek consent from the property owner. For entry upon tribal trust or individual trust lands, we also advise that BNSF make a good-faith effort to obtain written consent from those with homesite permits or leases or other property rights to impacted lands, even if they are not resident at this time.

This designation is also contingent upon the Navajo Nation receiving a minimum of 24 hour advance notice of actual work to be performed at the site. The advance notice may be completed by electronic mail sent to Vivian Craig (viviancraig@navajo-nsn.go) and Harrison Karr (hkarr@nndoj.org), or to other appropriate Navajo Nation representatives in the absence of any of those named.

Please feel free to contact me if you have any questions regarding this matter.



Donald Benn
Executive Director
Navajo Nation Environmental Protection Agency



Harrison Karr, Attorney
Navajo Nation Department of Justice

cc: (email only)
Sarah Mueller, USEPA
Steve Calanog, USEPA
Vivian Craig, NNEPA